

REMARKS

The Final Office Action of November 17, 2005 has been reviewed and its contents carefully noted. Reconsideration of this case, as amended, is earnestly requested. Claims 1-16 are pending in the application, claims 1 and 2 being amended by this response. Claims 1 and 2 are amended for clarification to overcome the indefiniteness rejections. The amendment of the claims is supported throughout the specification and by the examples. No new matter has been added, and no excess claims fee is due.

The Examiner's attention is drawn to the fact that submitted herewith is Applicant's Petition For Extension Of Time To File Response Accompanied By Fee and a check for payment of the large-entity fee for a one month extension of time.

Also submitted herewith is a certified copy of the priority document, in compliance with 35 U.S.C. § 119(b).

Entry of this amendment is earnestly requested as it is believed: 1) to be fully responsive to all outstanding rejections and objections, 2) to be fully supported by the original disclosure and include no new matter, 3) to require no further office search, and 4) to place the claims in better form for appeal, should an appeal become necessary.

In view of the foregoing amendments and following remarks, favorable reconsideration and withdrawal of the outstanding rejections are respectfully requested.

Examiner's Response to Applicant's Arguments

The Examiner states that Applicant's arguments for the patentability of the claims over Deutsch *et al.* and Amey *et al.*, included in the Office Action Response of September 29, 2005, are considered persuasive, because Deutsch *et al.* specifically teaches that the rupture time must be forty seconds or less. However, the Examiner states that Applicant's arguments are moot in view of the new grounds of rejection.

Because the Examiner did not expressly state that the previous rejections are maintained in the Final Action, it is presumed that the previous rejections have been withdrawn. However, for the sake of clarity, if the Examiner intended to maintain the previous rejections, then Applicant respectfully submits that the previous rejections have been overcome by the evidence and arguments of record in Applicant's previous Response, filed on September 29, 2005, together with the present amendments, the following remarks and the attached certified copy of the

priority document. The arguments in Applicant's previous Response, filed on September 29, 2005, are hereby incorporated herein by reference, rather than repeating them here. Favorable reconsideration and withdrawal of any and all outstanding rejections are therefore respectfully requested.

Priority

Applicant respectfully acknowledges the statutory requirement for a certified copy of the priority document. Enclosed herewith is a certified copy, obtained directly from the Philippines patent office, of the corresponding Philippines patent application (Ser. No. 12003000285), filed on June 6, 2003, from which priority has been properly claimed in the present U.S. application. Applicant thus has complied with the requirements of 35 U.S.C. § 119(b) for claiming priority to the earlier Philippines application filing date. Therefore, the effective filing date of the present application is June 6, 2003.

Rejections Under 35 U.S.C. § 112

Claim 1-16 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. More particularly, the Examiner states that Applicant's amendment of claim 1 to recite a rupture time of more than "forty" seconds constitutes new matter not supported by the original disclosure, and states that appropriate correction and/or clarification is required.

Claim 1 is hereby amended to overcome the rejection. More particularly, claim 1 is amended to recite a rupture time of more than "sixty" seconds, as helpfully suggested by the Examiner. This amendment of claim 1 clearly is supported by the original disclosure (*e.g.*, paragraph 0013), as noted by the Examiner. Reconsideration and withdrawal of the rejection of claim 1 as failing to comply with the written description requirement are therefore respectfully requested.

Dependent claims 2-16, being dependent upon and further limiting independent claim 1, should be allowable for that reason, as well as for the additional limitations recited therein. Reconsideration and withdrawal of the rejection of claims 1-16 as failing to comply with the written description requirement are therefore respectfully requested.

Claim 2 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite. More particularly, the Examiner states that recitation of the parenthetical term "caplet" renders the claim indefinite, and that appropriate correction and/or clarification is required.

Claim 2 is hereby amended to overcome the rejection. More particularly, claim 2 is amended to delete the parenthetical term, as helpfully suggested by the Examiner. Reconsideration and withdrawal of the rejection of claim 2 as being indefinite are therefore respectfully requested.

Rejections Under 35 U.S.C. § 103(a)

Claims 1-12 and 15-16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Khan *et al.* (WO 02/43707) in view of Amey *et al.* (U.S. Pat. No. 6,080,426).

Claims 13-14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Khan *et al.* (WO 02/43707) in view of Amey *et al.* (U.S. Pat. No. 6,080,426), and further in view of Xiping Wang (U.S. Pat. No. 6,482,432).

Applicant respectfully disagrees with the obviousness rejections, and maintains that claims 1-16, as amended, are patentable over Khan *et al.* and Amey *et al.*, individually and in combination, for the reasons set forth below, and are further supported by the reasons given previously with respect to the rejections over Deutsch *et al.* and Amey *et al.* Applicant respectfully submits that all of the foregoing rejections are overcome by the present amendment of claim 1. Reconsideration and withdrawal of the obviousness rejections of claims 1-16 are therefore earnestly requested.

35 U.S.C. § 102(b) states as follows:

"35 U.S.C. 102 Conditions for patentability; novelty and loss of right to patent.

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, ..." (emphasis added).

Because the foregoing obviousness rejections are based on a printed publication (*i.e.* Khan *et al.* WO 02/43707), any determination of whether the reference constitutes "prior art" is controlled by the definition of "prior art" as set forth above under 35 U.S.C. § 102(b). Therefore, to constitute prior art that properly can be applied in a rejection under 35 U.S.C. § 103(a), the publication date of a printed publication must be more than one year prior to Applicant's filing date. Because Applicant has properly claimed priority from its earlier-filed foreign application under 35 U.S.C. § 119, the effective filing date of the present U.S. application is the filing date of the Philippines application, *i.e.*, June 6, 2003. However, the publication date of Khan *et al.* WO

02/43707 is June 6, 2002, which is not more than one year prior to Applicant's effective filing date. Therefore, Khan *et al.* does not constitute prior art with respect to Applicant's present claims.

It is respectfully submitted that the obviousness rejection of claim 1 is thus overcome. Reconsideration and withdrawal of the rejection are therefore respectfully requested.

Dependent claims 2-16, being dependent upon and further limiting independent claim 1, should be allowable for that reason, as well as for the additional limitations recited therein. Reconsideration and withdrawal of the rejection of claims 1-14 as being obvious are therefore respectfully requested.

CONCLUSION

Based upon the above amendments, remarks and the papers of record, Applicant believes that the pending claims of the above-captioned application are in allowable form and patentable over all of the prior art of record. Applicant therefore respectfully requests reconsideration of the pending claims 1-16 and a prompt Notice of Allowance thereon.

Respectfully submitted,
Tan, *et al.*

Dated: 3/17/2006

By: Thomas T. Aquilla
Thomas T. Aquilla
Registration No. 43,473
(603) 253-9474
Aquilla Patents & Marks, PLLC
221 Coe Hill Road
Center Harbor, NH 03226